

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:2

PLR-129394-12

Date:

December 17, 2012

Legend

Parent =

Sub =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

State A =

State B =

Dear :

This letter is in response to a letter dated July 8, 2012, submitted on behalf of Parent, requesting that the Commissioner make a determination under Treas. Reg. § 1.1502-75(b)(2) that Sub has joined in the making of the initial consolidated Federal income tax

return filed by Parent for its short taxable year starting on Date 1 and ending on Date 4 (the "Short-Year Return"). The material information submitted is summarized below.

Summary of Facts

Parent, a State A corporation, is an accrual-basis taxpayer that has adopted a 52-53-week tax year. Parent was incorporated on Date 1. On Date 2, Parent purchased all of the stock of Sub, a State B corporation. Parent timely filed the Short-Year Return as the parent of an affiliated group comprised of itself and Sub (together, the "Parent Group"). (Sub joined in the Short-Year Return for the period Date 3 through Date 4.) The Short-Year Return included all items of income, gain, deduction, loss, and credit for the members of the Parent Group for the period during which they were members of the group. However, the Short-Year Return did not include a Form 1122 ("Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return") executed by Sub. Parent was acquired on Date 5 by an unrelated party.

Representations

Parent has made the following representations:

- (a) Parent and Sub were eligible to file a consolidated Federal income tax return, with Parent as the common parent, for the taxable year ending on Date 4.
- (b) Except for the failure to file Form 1122 for Sub, Parent and Sub would have properly filed a consolidated return that included all of the members of the Parent Group for the taxable year ending on Date 4.
- (c) For the taxable year ending on Date 4, the Parent Group filed a consolidated return that included all items of income, gain, deduction, loss, and credit for the Parent Group, and that identified Sub on Form 851 ("Affiliations Schedule").
- (d) Neither Parent nor Sub filed a separate return for the taxable period ending on Date 4.

Applicable Law

Section 1.1502-75(a)(1) provides, in part, that a group which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member during any part of the taxable year for which the consolidated return is to be filed consents (in the manner provided in § 1.1502-75(b)) to the regulations under I.R.C. § 1502. If a group wishes to exercise its privilege of filing a consolidated return, such consolidated return must be filed not later than the last day prescribed by law (including extensions of time) for the filing of the common parent's return.

Section 1.1502-75(b)(1) provides, as a general rule, that the consent of a corporation referred to in § 1.1502-75(a)(1) shall be made by such corporation joining in the making of the consolidated return for such year. A corporation shall be deemed to have joined in the making of such return for such year if it files a Form 1122 in the manner specified in § 1.1502-75(h)(2).

Section 1.1502-75(h)(2) provides that if, under the provisions of § 1.1502-75(a)(1), a group wishes to file a consolidated return for a taxable year, then a Form 1122 must be executed by each subsidiary. For the taxable year to which this ruling is relevant, the group must attach either executed Forms 1122 or unsigned copies of the completed Forms 1122 to the consolidated return. If the group submits unsigned Forms 1122 with its return, it must retain the signed originals in its records in the manner required by § 1.6001-1(e). Form 1122 is not required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding taxable year.

Section 1.1502-75(b)(2) provides that if a member of the group fails to file Form 1122, the Commissioner may, under the facts and circumstances, determine that such member has joined in the making of a consolidated return by such group. The circumstances, among others, that will be taken into account in making this determination include: (i) whether or not the income and deductions of the member were included in the consolidated return; (ii) whether or not a separate return was filed by the member for that taxable year; and (iii) whether or not the member was included in the affiliations schedule (Form 851). If the Commissioner determines that the member has joined in the making of the consolidated return, such member shall be treated as if it had filed a Form 1122 for such year for purposes of § 1.1502-75(h)(2).

Ruling

Based solely on the information submitted and the representations made, we rule that Sub shall be treated as if it had filed a Form 1122 with the Short-Year Return for purposes of § 1.1502-75(h)(2) and shall be treated as having joined in the making of the Short-Year Return (§ 1.1502-75(b)(2)).

Caveats

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the taxpayer's ruling request. Verification of the information, representations, and other data may be required as part of the audit process.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

Procedural Statements

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to each Federal income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to the return that provides the date and control number of this letter ruling.

Pursuant to the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Russell G. Jones
Assistant to the Branch Chief, Branch 2
Associate Chief Counsel (Corporate)